

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

Foster Ogola, et al.,

Plaintiffs,

v.

Chevron Corp.,

Defendant.

Case No. 14-cv-00173-SC

STIPULATED PROTECTIVE ORDER

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the above-captioned parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order (the “Order”). The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 12.3, below, that this Order does not entitle them to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be applied when a Party seeks permission from the court to file material under seal.

2. DEFINITIONS

2.1 Challenging Party: A Party or Non-Party that challenges the designation of information or items under this Order.

2.2 “CONFIDENTIAL” Information or Items: Information (regardless of how it is

generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c) and are so-designated by a Designating Party.

2.3 Counsel: Outside Counsel of Record and In-House Counsel (as defined below) (as well as their support staff).

2.4 Designating Party: A Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as "CONFIDENTIAL."

2.5 Disclosure or Discovery Material: All items or information, regardless of the medium or manner in which it is generated, stored, or maintained (including, among other things, testimony, transcripts, briefing and tangible things), that are produced or generated in disclosures or responses to discovery in this matter.

2.6 Expert: A person with specialized knowledge or experience in a matter pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a consultant in this action.

2.7 In-House Counsel: Attorneys who are employees of a Party to this action (as well as their support staff). In-House Counsel does not include Outside Counsel of Record or any other outside counsel.

2.8 Non-Party: Any natural person, partnership, corporation, association, or other legal entity not named as a Party to this action.

2.9 Outside Counsel of Record: Attorneys who are not employees of a Party to this action but are retained to represent or advise a Party to this action and have appeared in this action on behalf of that Party or are affiliated with a law firm which has appeared on behalf of that Party (as well as their support staff).

2.10 Party: Any party to this action, including all of its officers, directors, employees, consultants, retained experts, and Outside Counsel of Record (and their support staff).

2.11 Producing Party: A Party or Non-Party that produces Disclosure or Discovery Material in this action.

2.12 Professional Vendors: Persons or entities that provide litigation support services

(e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or retrieving data in any form or medium) and their employees and subcontractors.

2.13 Protected Material: Any Disclosure or Discovery Material that is designated as “CONFIDENTIAL” pursuant to this Order.

2.14 Receiving Party: A Party that receives Disclosure or Discovery Material from a Producing Party.

2.15 Third Party Counsel: Outside Counsel or In-House Counsel for a Non-Party that produces Confidential Information or has its Confidential Information produced in this, or a related Rule 45, action (as well as their support staff).

3. SCOPE

The protections conferred by this Order cover not only Protected Material (as defined above), but also (1) any information copied or extracted from Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations, or presentations by Parties, Non-Parties or their Counsel that might reveal Protected Material. However, the protections conferred by this Stipulation and Order do not cover the following information: (a) any information that is in the public domain at the time of disclosure to a Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of publication not involving a violation of this Order, including becoming part of the public record through trial or otherwise; and (b) any information known to the Receiving Party or a Non-Party prior to the disclosure or obtained by the Receiving Party or a Non-Party after the disclosure from a source who obtained the information lawfully and under no obligation of confidentiality to the Designating Party. Any use of Protected Material at trial shall be governed by a separate agreement or order.

4. DURATION

Even after final disposition of this litigation, the confidentiality obligations imposed by this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and

defenses in this action, with or without prejudice; and (2) final judgment herein after the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the time limits for filing any motions or applications for extension of time pursuant to applicable law.

5. DESIGNATING PROTECTED MATERIAL

5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or Non-Party that designates information or items for protection under this Order must take care to reasonably limit any such designation to specific material that qualifies under the appropriate standards. The Designating Party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify—so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this Order.

Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified or to have been made for an improper purpose (*e.g.*, to unnecessarily encumber or retard the case development process or to impose unnecessary expenses and burdens on other parties) and that the Designating Party refuses to change when the dispute is brought to its attention, expose the Designating Party to sanctions. If it comes to a Designating Party's attention that information or items that it designated for protection do not qualify for protection, that Designating Party must promptly notify all other Parties that it is withdrawing the mistaken designation.

5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (*see, e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so designated before the material is disclosed or produced.

Designation in conformity with this Order requires:

(a) For information in documentary form (*e.g.*, paper or electronic documents, but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix the legend "CONFIDENTIAL" to each page that contains protected material.

1 A Party or Non-Party that makes original documents or materials available for inspection
 2 need not designate them for protection until after the inspecting Party has indicated which material it
 3 would like copied and produced. During the inspection and before the designation, all of the
 4 material made available for inspection shall be deemed “CONFIDENTIAL.” After the inspecting
 5 Party has identified the documents it wants copied and produced, the Producing Party must
 6 determine which documents, or portions thereof, qualify for protection under this Order. Then,
 7 before producing the specified documents, the Producing Party must affix the “CONFIDENTIAL”
 8 legend to each page that contains Protected Material.

9 (b) For testimony given in deposition or in other pretrial or trial proceedings, that the
 10 Designating Party identify all protected testimony within 30 days of receiving the transcript from the
 11 court reporter.

12 (c) For information produced in some form other than documentary and for any other
 13 tangible items, that the Producing Party affix in a prominent place on the exterior of the container or
 14 containers in which the information or item is stored the legend that states “CONFIDENTIAL—
 15 PURSUANT TO PROTECTIVE ORDER IN OGOLA v. CHEVRON CORP.” or its substantial
 16 equivalent. If only a portion or portions of the information or item warrant protection, the Producing
 17 Party, to the extent practicable, shall identify the protected portion(s).

18 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
 19 designate qualified information or items does not, standing alone, waive the Designating Party’s
 20 right to secure protection under this Order for such material. Upon timely correction of a
 21 designation, the Receiving Party must make reasonable efforts to assure that the material is treated in
 22 accordance with the provisions of this Order. A correction shall be deemed timely if the Designating
 23 Party acts with reasonable diligence to make the correction upon realizing that materials have
 24 inadvertently not been marked CONFIDENTIAL.

25 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

26 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
 27 confidentiality at any time. A Party does not waive its right to challenge a confidentiality
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1 designation by electing not to mount a challenge promptly after the original designation is disclosed.

2 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process
3 by providing written notice of each designation or category of designations it is challenging and
4 describing the basis for the challenge, including page or Bates Nos. and line numbers, where
5 available. To avoid ambiguity as to whether a challenge has been made, the written notice must
6 recite that the challenge to confidentiality is being made in accordance with this specific paragraph
7 of the Order. The parties shall attempt to resolve each challenge in good faith and must begin the
8 process by conferring directly within 14 days of the date of service of notice, or at such time
9 thereafter to which both parties agree. In conferring, the Challenging Party must explain the basis
10 for its belief that the confidentiality designation was not proper and must give the Designating Party
11 an opportunity to review the designated material, to reconsider the circumstances, and, if no change
12 in designation is offered, to explain the basis for the chosen designation. A Challenging Party may
13 proceed to the next stage of the challenge process only if it has engaged in this meet and confer
14 process first or has established that the Designating Party is unwilling to participate in the meet and
15 confer process in a timely manner, that is, within 10 business days of the last effort to meet-and-
16 confer on the topic.

17 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
18 intervention, the Challenging Party shall file and serve a motion to remove the confidentiality
19 designation, consistent with Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if
20 applicable) within 21 business days of the initial notice of challenge or within 14 business days of
21 the parties agreeing that the meet and confer process will not resolve their dispute, whichever is
22 later. Each such motion must be accompanied by a competent declaration affirming that the movant
23 has complied with the meet and confer requirements imposed in the preceding paragraph. Failure by
24 the Challenging Party to make such a motion including the required declaration within 21 business
25 days (or 14 business days, if applicable) shall automatically maintain the confidentiality designation
26 for each challenged designation. Any motion brought pursuant to this provision must be
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1 accompanied by a competent declaration affirming that the movant has complied with the meet and
2 confer requirements imposed by the preceding paragraph.

3 The burden of persuasion in any such challenge proceeding shall be on the Designating
4 Party. Frivolous challenges, and those made for an improper purpose (*e.g.*, to harass or impose
5 unnecessary expenses and burdens on one or more other parties) may expose the Challenging Party
6 to sanctions. All parties shall continue to afford the material in question the level of protection to
7 which it is entitled under the Producing Party's designation until the court rules on the challenge.

8 7. ACCESS TO AND USE OF PROTECTED MATERIAL

9 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
10 produced by another Party or by a Non-Party in connection with this case only for prosecuting,
11 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to
12 the categories of persons and under the conditions described in this Order. When the litigation has
13 been terminated, a Receiving Party must comply with the provisions of section 13 below.

14 Protected Material must be stored and maintained by a Receiving Party at a location and in a
15 secure manner that ensures that access is limited to the persons authorized under this Order.

16 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered
17 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
18 information or item designated "CONFIDENTIAL" only for purposes of and use in this litigation
19 and only to:

20 (a) The Receiving Party's Outside Counsel of Record in this action, as well as employees
21 of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for
22 this litigation;

23 (b) The officers, directors, and employees (including In-House Counsel) of either the
24 Receiving Party or the Receiving Party's affiliates, to whom disclosure is reasonably necessary for
25 this litigation;

26 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
27 reasonably necessary for this litigation and who have signed the "Acknowledgment and Agreement
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to Be Bound” (attached hereto as Exhibit A);

(d) The court and its personnel;

(e) Court reporters and their staff;

(f) Professional jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound”;

(g) During their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound,” unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Order.

(g) The author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Party is served with a subpoena, court order or regulatory or legislative request that calls for the disclosure of any information or items designated in this action as “CONFIDENTIAL,” that Party must:

(a) Promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;

(b) Promptly notify in writing the Party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Order. Such notification shall include a copy of this Order; and

(c) Cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL”

1 before a determination by the court vested with jurisdiction to rule on the subpoenas to whether
 2 production is required, unless the Party has obtained the Designating Party's permission. The
 3 Designating Party shall bear the burden and expense of seeking protection in that court of its
 4 confidential material—and nothing in these provisions should be construed as authorizing or
 5 encouraging a Receiving Party in this action to disobey a lawful directive from another court.

6 9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS
 7 LITIGATION

8 (a) The terms of this Order are applicable to information produced by a Non-Party in this
 9 action and designated as "CONFIDENTIAL." Such information produced by Non-Parties in
 10 connection with this litigation is protected by the remedies and relief provided by this Order.
 11 Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional
 12 protections.

13 (b) In the event that a Party is required, by a valid discovery request, to produce a Non-
 14 Party's confidential information in its possession, and the Party is subject to an agreement with the
 15 Non-Party not to produce the Non-Party's confidential information, then the Party shall:

16 (1) Promptly notify in writing the Requesting Party that some or all of the
 17 information requested is subject to a confidentiality agreement with a Non-Party;

18 (2) Provide the Non-Party with a copy of this Order, the relevant discovery
 19 request(s), and a reasonably specific description of the information requested; and

20 (3) Make the information requested available for inspection by the Non-Party.

21 (c) If the Non-Party fails to object or seek a protective order from this court within 30
 22 days of receiving the notice and accompanying information, the Receiving Party may produce the
 23 Non-Party's confidential information responsive to the discovery request. If the Non-Party timely
 24 seeks a protective order, the Receiving Party shall not produce any information in its possession or
 25 control that is subject to the confidentiality agreement with the Non-Party before a determination by
 26 the court. Neither Party shall assert that a Non-Party's pursuit of a protective order shall subject
 27 such Non-Party to this Court's jurisdiction for any purposes other than the resolution of such
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1 protective order. Absent a court order to the contrary, the Non-Party shall bear the burden and
 2 expense of seeking protection in this court of its Protected Material.

3 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

4 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
 5 Material to any person or in any circumstance not authorized under this Order, the Receiving Party
 6 must immediately: (a) notify in writing the Designating Party of the unauthorized disclosures, (b)
 7 use its best efforts to retrieve all unauthorized copies of the Protected Material, unless the
 8 Designating Party agrees that is unnecessary, (c) inform the person or persons to whom unauthorized
 9 disclosures were made of all the terms of this Order, and (d) request such person or persons to
 10 execute the "Acknowledgment and Agreement to Be Bound."

11 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
 12 MATERIAL

13 In the event a Producing Party inadvertently produces privileged material, such production
 14 shall not waive the privilege if the Producing Party requests its return within a reasonable time
 15 (which time shall not be less than two weeks) of discovering it was inadvertently produced. Upon
 16 a demand for the return of privileged material produced in this action, any Receiving Party shall
 17 immediately return it and not retain copies, but retains the right to contest the assertion of privilege
 18 by filing a motion with the court. If the assertion of privilege arises while a witness is being
 19 questioned about produced material that is marked as an exhibit to an ongoing deposition, the
 20 interrogating lawyer shall terminate the line of questioning, subject to the right to resume the
 21 deposition, if the claim of confidentiality is overruled. During any dispute, the document will
 22 retain any applicable privilege and none shall be waived to the fullest extent allowed by Federal
 23 Rule of Evidence 502.

24 12. MISCELLANEOUS

25 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek
 26 its modification by the court in the future.

12.2 Right to Assert Other Objections. By stipulating to the entry of this Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Order.

12.3 Filing Protected Material. Without written permission from the Designating Party or a court order secured after appropriate notice to all interested persons, a Party may not file in the public record in this action any Protected Material. A Party that seeks to file under seal any Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed under seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request establishing that the Protected Material at issue is privileged, protectable as a trade secret, or otherwise entitled to protection under the law. If a Receiving Party's request to file Protected Material under seal pursuant to Civil Local Rule 79-5(d) is denied by the court, then the Receiving Party may file the information in the public record pursuant to Civil Local Rule 79-5(e) unless otherwise instructed by the court.

13. FINAL DISPOSITION

Within 30 days after the final disposition of this action, as defined in paragraph 4, each Receiving Party must return all Protected Material to the Producing Party or destroy such material. As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of the Protected Material. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by category, where appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,

1 correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant
2 and expert work product, even if such materials contain Protected Material. Any such archival
3 copies that contain or constitute Protected Material remain subject to this Order as set forth in
4 Section 4.

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6 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

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8 DATED: March 10, 2015

/s/ Neil J. Fraser
Attorneys for Plaintiffs

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10 DATED: March 13, 2015

/s/ Robert A. Mittelstaedt
Attorneys for Defendant

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12 Pursuant to Local Rule 5-1(i)(3), I, Robert A. Mittelstaedt, attest that concurrence in filing
13 this document has been obtained from the other signatory.

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17 PURSUANT TO STIPULATION, IT IS SO ORDERED.

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20 DATED: 03/18/2015

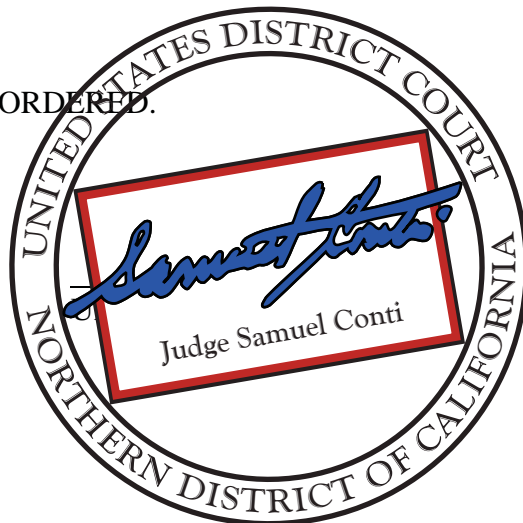


EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ **[print or type full name]**, of _____
[print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Northern District of California on **[date]** in the case of *Ogola, et al. v. Chevron Corp.*, Case No. 14-cv-00173-SC. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Northern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ **[print or type full name]** of _____
_____ **[print or type full address and telephone number]** as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____